

REMARKS

Claims 1-18 are pending, but claims 19-45 have been previously withdrawn from consideration. No new matter is presented, and reconsideration of the claims, in light of the remarks presented below, is respectfully requested.

Rejection Under 35 U.S.C. § 102(e)

Claims 1-3, 8, 11 and 12 stand rejected as being anticipated under 35 U.S.C. § 102(e) by Lee (U.S. 6,837,827). The rejections are respectfully traversed and reconsideration is requested. The following is a comparison between embodiments of the present invention and the cited reference.

Independent claim 1 relates to a method for coaching a user with an electronic coaching device. The method comprises determining that an exercise activity should be performed according to a first muscular phase and provides a first user perceptible output from the coaching device to prompt the user to operate the exercise apparatus according to the first muscular phase. The method also determines that the exercise activity should be performed according to a second muscular phase that differs from the first muscular phase and provides a second user perceptible output from the coaching device to prompt the user to operate the exercise apparatus according to the second muscular phase. According to the method, the second user perceptible output differs from the first user perceptible output.

Lee discloses a device that is essentially a timer, heart rate monitor and GPS tracking component in one unit. As disclosed in Lee, the device can “assist the user in accomplishing at least three tasks, including reaching performance goal, navigating, and accumulating statistics.” (Col. 3:50-55.) To assist the user in reaching performance goals, the Lee device monitors the user’s performance by calculating and tracking performance characteristics. The performance characteristics disclosed in Lee are “the user’s location, elevation, distance, elapsed time, speed or calories burned.” (Col. 6:60-65.) Lee further explains how these characteristics can be calculated and tracked:

For example, the processor 60 may calculate a location by using location data from the GPS component 40. The processor 60 may calculate an elevation using location data from the GPS component 40, altitude information from the altimeter 85, or both. The processor 60 may calculate a change in elevation by comparing a current elevation with a previous elevation. The processor 60 may calculate a distance by comparing a current location with a previous location. The processor 60 may calculate an elapsed time using data from the timer 62 by comparing a previous time with a current time. The processor 60 may calculate a speed by comparing a distance with an elapsed time. The processor 60 may calculate a number of calories burned based upon the user's current speed and the user's body weight, and may also consider distance and change in elevation.

(Col. 6:65-7:12.) Lee, however, does not teach or suggest determining whether an exercise activity should be performed according a muscular phase, and providing user perceptible output prompting a user to operate an exercise device according to that muscular phase, as recited in independent claim 1.

To this end, Applicant would like to take the opportunity to clarify that prompting a user to operate an exercise device according to different muscular phases, as recited in independent claim 1, is different from a device that merely instructs a user to modify his or her exercise speed, as disclosed in Lee.

For example, in the Office Action, the Examiner cites to col. 8, lines 21 *et seq.* of Lee as purportedly disclosing that the Lee device determines whether an exercise device should be operated according to a first or second muscular phase. (Office Action at pp. 2-3.) Lee, however, only discloses ways in which the device communicates to a user to modify his or her pace to reach his or her performance goal of moving a particular geographic-tracked distance over a specified amount of time. (*See e.g.*, col. 9:26-28 (“The device 10 then assists the user in reaching a constant pace.”); and col. 10:3-7 (“For example, the device 10 may maintain a slow speed during a first interval, gradually increase the speed during a next interval to reach a higher speed, maintain the higher speed during a next interval, then gradually decrease the speed during a final interval.”).) To do so, the device disclosed in Lee uses a GPS component to track the distance the user has moved relative to a particular distance goal.

In contrast, independent claim 1 relates to prompting a user to operate an exercise device according to different muscular phases. As described in the present application,

muscular phases are isokinetic, isometric, concentric, and eccentric. The isokinetic muscular phase is achieved through quick repetitive motion, while the isometric muscular phase is achieved through the tightening and holding of these tightened muscles. The concentric muscular phase is achieved through the slow contraction of muscles, while the eccentric muscular phase is achieved through the slow relaxation of the muscles under a load.

([0002].) Merely modifying a user's speed, as disclosed in Lee, does not teach or suggest instructing a user to operate an exercise device according to different muscular phases.

Therefore, it is respectfully submitted that amended independent claim 1 patentably distinguishes over Lee. Pending claims 2, 3, 8, 11 and 12 depend either directly or indirectly from independent claim 1 and inherit the patentability thereof. Thus, claims 2, 3, 8, 11 and 12 patentably distinguish over the cited art for at least the reasons provided herein.

Rejection Under 35 U.S.C. § 103

Claims 4, 7, 12, 15 and 16 stand rejected as being obvious under 35 U.S.C. § 103(a) over Lee. In the Office Action, the Examiner alleges that

Lee does not specifically detail the first muscular phase is a concentric phase, the second muscular phase is an eccentric phase, and the third muscular phase is an isometric phase. [T]he concentric, eccentric and isometric phases each last 2 to 8 seconds, however they are obvious design choices as they are well known variants if performing an exercise routine and are the various species of claims 12, 15 and 16.

(Office Action, p. 3.) Applicant respectfully traverses this rejection.

As an initial matter, the Examiner has failed to provide any evidence that performing these exercises, or, for that matter, performing these exercises in the recited time intervals, would be obvious design choices of purported well known variants of performing an exercise routine. As discussed in MPEP § 2144.03, "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable

of instant and unquestionable demonstration as being well-known.” (Emphasis in original.) Here, Applicant respectfully submits that the limitations recited in claims 4, 7, 12, 15 and 16 are not “capable of instant and unquestionable demonstration as being well-known,” as different types of exercises and exercise devices are operated in different manners. Accordingly, Applicant requests that the Examiner provide evidence supporting this allegation in order to maintain this rejection, in accordance with MPEP § 2144.03.

Notwithstanding the above, Lee does not even teach or suggest instructing a user to operate an exercise device according to different muscular phases, as discussed above. Thus, the arguments above are hereby submitted for claims 4, 7, 12, 15 and 16, which patentably distinguishes over Lee for the foregoing reasons.

Allowable Subject Matter

Applicant is grateful for the Examiner’s indication that claims 5, 6, 9, 10, 13, 14, 17 and 18 would be allowable “if rewritten in independent form including all of the limitations of the base claim and any intervening claims.” (Office Action, p. 4.) However, in view of Applicant’s belief that the claims from which each of these claims depend are allowable, as discussed above, Applicant respectfully submits that claims 5, 6, 9, 10, 13, 14, 17 and 18 likewise patentably distinguish over the cited art for at least the reasons provided herein.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket No. 616782000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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